

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
Southern Division

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U.S. BANKRUPTCY COURT  
N.D. OF ALABAMA

In re:

SHOOK & FLETCHER INSULATION CO.

Debtor-in-Possession.

Case No. **02-02771**  
Chapter 11

**DECLARATION OF WAYNE W. KILLION, JR.**  
**IN SUPPORT OF VOLUNTARY PETITION AND FIRST DAY MOTIONS**

I, Wayne W. Killion, Jr., state:

1. I am the Chief Executive Officer and President of Shook & Fletcher Insulation Co., a Delaware corporation ("Shook" or the "Debtor"), the debtor and debtor in possession in the above-captioned Chapter 11 case. I am familiar with the Shook's day-to-day operations, business affairs, books and records.

2. On April 8, 2002 (the "Petition Date"), Shook filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). Shook continues in possession of its properties and the management of its business as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. In order to enable it to operate effectively and to minimize the adverse effects of its Chapter 11 filing, Shook has requested various types of relief in "First Day" motions and applications filed with the Court. I am responsible for implementing Shook's restructuring efforts and am authorized to submit this declaration in support of such motions and applications.

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4. As President of the Debtor since 2000, I have supervised the Debtor's business and financial affairs and have participated in its strategic planning. I have been actively involved in the issues and complex negotiations leading up to the pre-petition Settlement Agreements described below, as well as the preparation of the prepackaged Plan of Reorganization under Chapter 11 (the "Plan") and accompanying disclosure statement (the "Disclosure Statement"), and the solicitation of acceptances of the Plan pre-petition.<sup>1</sup> As a result of my first-hand experience and knowledge, and through my review and knowledge of the Debtor's books and records and other information, including discussions with the Debtor's management, employees, key creditors, and representatives of asbestos claimants, as well as outside advisors, I have formed opinions as to the necessity of obtaining the relief sought by the Debtor in its First Day motions and applications in order to permit the Debtor to continue to operate effectively and manage its Chapter 11 case efficiently. I believe there will be significant deleterious effects from not obtaining such relief.

5. I submit this Declaration in support of the emergency motions of the Debtor seeking the entry of "First Day" orders. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my review of the Debtor's books and records, information conveyed to me by other representatives of the Debtor, including discussions with managers, other employees, and outside advisors, as well as my experience and knowledge of the Debtor's operations and financial condition. I am competent to testify to these matters, and if I were called as a witness, I would testify to the facts and opinions set forth below. Where my opinions relate to legal matters, I have consulted with and am relying upon the advice of Shook's lawyers with respect to such matters.

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<sup>1</sup> Any capitalized term not expressly defined in this Declaration shall have the meaning

6. Part I of this Declaration describes the Debtor's business and the circumstances leading up to the filing of its Chapter 11 petition. Part II sets forth the relevant facts in support of the Debtor's emergency First Day motions.

### **BACKGROUND**

#### **A. SHOOK'S ASBESTOS-RELATED CLAIMS**

7. The Debtor is a small, family-owned business centered in Birmingham, Alabama. It is a Delaware corporation with offices in Birmingham, Decatur, Mobile and Wilsonville, Alabama; Atlanta, Georgia; and Chattanooga, Knoxville and Nashville, Tennessee. Since its incorporation in 1949, Shook has been a specialty thermal insulation distributor and union contractor, serving primarily heavy industry. Shook has never manufactured insulation products. Until the early 1970s, insulation products made by the major insulation manufacturers, including certain products distributed and/or installed by Shook, contained asbestos. Since the mid-1970's, Shook has continued to install non-asbestos containing insulation and to provide other services with respect to the selection, placement, removal and installation of specialty thermal insulation. Aside from the asbestos-related costs described below, the Debtor's business operations are profitable.

8. Between 1976 and 1997, Shook became the subject of lawsuits involving the claims of over 45,000 individuals, a number of which have been settled but remain unpaid in whole or in part. Since 1997, the number of asbestos personal injury cases brought against Shook and the costs associated with resolving those cases have increased dramatically. At the end of 2000, Shook had over 14,000 unresolved asbestos-related claims pending against it, which Shook was working to manage and resolve as appropriate through settlement. During the first

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ascribed to that term in the relevant motion or application or in the Disclosure Statement.

six months of 2001, Shook settled claims from over 3,600 individuals. Despite Shook's efforts, however, the pace of claims being filed continued to increase, and as of June 30, 2001, Shook was facing pending claims from over 30,000 individuals, including some who have clear asbestos-related injuries and others who likely had no contact with any product distributed or installed by Shook, as well as claimants who have manifested no asbestos-related injury. Thousands of lawsuits have been filed against Shook in Alabama, Georgia, Louisiana, Mississippi, Ohio, Texas and other states. As a result, Shook has been saddled with extraordinary and ever increasing legal and defense costs and settlement expenses. While Shook believes that these expenses are covered under the general liability insurance policies Shook purchased from 1949 through 1985 (which cover such liabilities, among others), a number of Shook's insurers stopped making payments to Shook with respect to Asbestos Claims. As a result, Shook has been unable to pay the costs of defending and settling Asbestos Claims.

9. By February 2002, Shook was facing approximately 50,000 pending cases in a number of jurisdictions involving plaintiffs claiming damages for injuries ranging from non-malignant diseases to mesothelioma (a form of asbestos-related lung cancer). Unless Shook moved forward with a bankruptcy proceeding, it was expected that claims filings would continue at a rate of approximately 3,000 new claims per month. In addition, Shook was facing over 20,000 claims from plaintiffs whose claims had been settled by or on behalf of Shook through the Center for Claims Resolution, Inc. (the "CCR"), but as to which Shook had not paid its share of the settlement amount, in whole or in part.

**B. THE PRE-PETITION SETTLEMENTS AND THE PLAN**

10. As both the volume of Asbestos Claims and the associated costs of defense and settlements increased, and as its principal insurers refused to make further payments, Shook became concerned about its ability to continue in business and to continue to pay the legal costs being forced upon it and settlement costs for claimants alleging injuries from Shook's historical operations. In the summer of 2001, Shook consulted counsel about its options, including utilizing Section 524(g) of the Bankruptcy Code.

11. At the beginning of this process, I focused on two principal goals. The first was to establish mechanisms to provide fair compensation for individuals who were truly injured as a result of asbestos products which Shook had handled, and to call upon the extensive insurance coverage, which Shook had purchased to cover such costs, as the source for such compensation. The second goal was to preserve Shook's business and goodwill, which had been built over 50 years, in an attempt to save a viable company and the jobs it creates. I determined that the most efficient and fair way to accomplish these goals was to (i) reach agreement with representatives of Asbestos Claimants to settle outstanding claims, (ii) establish a trust mechanism under § 524(g) of the Bankruptcy Code to provide for future claimants, and (iii) to maximize proceeds available from Shook's insurance carriers to provide a source of funds to pay injured persons.

12. In an effort to implement these goals, Shook opened negotiations with representatives of a number of asbestos claimants and other parties. Shook originally proposed that its insurance assets be contributed to a Trust to be created under a plan of reorganization to be filed, and that all present asbestos claims, all claims Shook previously had settled but not paid, and all future claims be treated as general unsecured claims. The plaintiffs' representatives rejected this approach, telling us that their experience in prior and pending asbestos bankruptcy

proceedings was a story of extended delay in payment and extensive litigation costs. The plaintiffs' representatives insisted that any settlement arrangement be structured to try to avoid such problems by providing security for a portion of the payments to present claimants, and by entering into and implementing agreements pre-petition, including establishing a pre-petition trust mechanism.

13. As more particularly described in the Disclosure Statement (*see* Section 3.2), these negotiations in the last half of 2001 resulted in the several Settlement Agreements between and among the Debtor, certain Asbestos Claimants, the CCR and one of Shook's insurers. The settlement amounts established under the Settlement Agreements, and the collateral granted to secure payment under those Agreements, represent a complex and heavily negotiated comprehensive arrangement that takes into account factors including the cost of inflation, the increases in settlement costs and jury awards, and the costs of litigating unsubstantiated claims. The parties each evaluated the Asbestos Claims presently asserted against Shook; they examined historical data for not only Shook but also for the industry in general and other similarly situated defendants. In addition, MFR Consulting Services, Inc., the advisor retained by Shook, provided advice on the current state of litigation and anticipated settlement expenses for like cases. The parties then agreed upon an appropriate dollar amount for categories of exposures and illnesses, which are reflected in the Compensable Disease Matrix. It is my understanding that lead counsel for the claimants discussed matters relevant to the settlements and its terms with a number of other counsel representing large groups of present Asbestos Claimants holding claims against Shook, including the other members of the Unofficial Committee of Asbestos Claimants, which was formed in December 2001.

14. Based upon these Settlement Agreements, Shook structured its proposed reorganization as a pre-packaged plan, and solicited acceptances prior to the filing of this voluntary petition. To date, the support for the Plan, both in number of acceptances and in spirit, has been overwhelming. Moreover, the positive impact and good will generated by the intimate involvement and interaction of the major creditor constituencies and representatives in the lengthy, arduous and sometimes heated negotiations, without the added pressures of the restrictions imposed by a pending Chapter 11 case, has directly resulted in the ability of the Debtor to remain current on all its operating obligations and continue to enjoy broad support from its trade vendors<sup>2</sup>

15. Under the terms of the pre-packaged Plan, upon the Effective Date, there will be created a trust (the "Trust"), which would assume all of the Debtor's asbestos-related liabilities. The Trust will be funded with all of Shook's insurance assets available to pay asbestos claims, including all of Shook's rights to payments negotiated from various insurers under existing insurance settlement agreements,<sup>3</sup> and \$3.3 million, to be paid by Shook over time.<sup>4</sup> The interests of present and future asbestos-related claimants whose injuries may not yet have manifested and/or who are otherwise not reasonably aware of their claims were represented by

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<sup>2</sup> A number of Shook's trade vendors have expressed concerns about the impact of Shook's filing upon them, and several have modified Shook's historical payment terms to require cash payments on delivery or in advance.

<sup>3</sup> As explained in greater detail in the Disclosure Statement, Shook's insurance assets were pledged to the Pre-Petition Trust created under the Settlement Agreements. That Trust will use those proceeds to make payment of the Secured Claims of Present Asbestos Claimants and SBNP Claimants, as well as the CCR's Secured Claim. All remaining insurance assets will then "pour-over" to the Trust created under the Plan, which will be responsible for payment of all Unsecured Asbestos Claims, including future claims.

<sup>4</sup> This payment is to be made by both Shook and its affiliate, Shook & Fletcher Supply Co., in satisfaction of the requirements of § 524(g) and as consideration for the releases and injunctions provided under the Plan.

an independent legal representative, R. Scott Williams, Esquire, who was appointed by Shook to represent the interests of such parties prior to the Petition Date, and was intimately involved in negotiating the terms of the Plan. Shook has also filed an application seeking Mr. Williams' appointment as the legal representative for future claimants in accordance with Section 524(g).

16. Under the Plan, all allowed claims unrelated to asbestos matters are to be paid in full, either upon the Effective Date of the Plan or in the ordinary course of Reorganized Shook & Fletcher's business:

- a. Administrative expenses and priority tax claims, which are not classified, will be paid as required by the Bankruptcy Code.
- b. Priority claims (Class 1 under the Plan) are to be paid in full.
- c. Shook's secured lenders are classified in Classes 2, 3 and 4. Class 2 is the secured claim of SouthTrust Bank ("SouthTrust"), which has extended a \$3 million working capital line of credit to Shook (the "Pre-petition Working Capital Line").<sup>5</sup> Shook is current in its obligations to SouthTrust, and under the Plan, SouthTrust is to be paid in full by the Reorganized Shook & Fletcher in the ordinary course of business and in accordance with the governing loan documents.
- d. Class 3 is the secured claim of AmSouth Bank ("AmSouth"), which in July 1998 made a secured mortgage loan to Shook in the original principal amount of \$1,050,000. Approximately \$900,000 remains outstanding to AmSouth. The AmSouth mortgage loan is secured by Shook's headquarters facility at 4625 Valleydale Road in Birmingham. Shook is current on its loan repayment obligations to AmSouth, and expects to remain current during this case. AmSouth will be repaid under the Plan by the Reorganized Shook & Fletcher in the ordinary course of business and in accordance with the payment and amortization schedule established in the AmSouth loan documents.
- e. Class 4 is the secured claim of Shook's affiliate, Shook & Fletcher Supply Co. ("Supply"). As the settlement process and Shook's planning for a bankruptcy proceeding continued in the Fall of 2001, Shook realized that

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<sup>5</sup> Approximately \$2.6 million is outstanding on the SouthTrust Pre-petition Working Capital Line as of the Petition Date.



the administrative costs of this process would impose substantial additional cash needs beyond the funds available under its Pre-petition Working Capital Line from SouthTrust. In order to accommodate those needs, in December 2001, Shook arranged for a subordinated secured financing facility of up to \$2 million from Supply, which was recently increased to \$3 million (the "Supply Financing").<sup>6</sup> Supply will be repaid in full under the Plan by the Reorganized Shook & Fletcher in the ordinary course of business and in accordance with the governing loan documents.

- f. Shook's operational trade claims are classified in Class 9 as unsecured claims not related to asbestos matters. These claims are also to be paid in full under the Plan by the Reorganized Shook & Fletcher.<sup>7</sup>

17. The Plan provides that all Asbestos Claims, which are classified in Classes 5, 6, 7, 8 and 10, are impaired and are channeled to the Trusts, as provided in the Plan. Once the Plan is confirmed and has become effective, the Secured Asbestos Claimants will continue to be paid from the Pre-petition Trust and all unsecured Asbestos Claimants will share in the Trust Assets, as agreed in the Settlement Agreements and as set forth in the Plan. Following the Effective Date, the Reorganized Shook & Fletcher will operate free of all asbestos-related claims (including future demands) and litigation.

18. I am advised by Logan & Company, the Voting Agent selected by the Debtor, that as of April 1, 2002, the deadline for receipt of ballots with respect to the Plan, ballots had been received with respect to over 66,000 individual asbestos claims, and virtually all voted to accept the Plan.

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<sup>6</sup> Approximately \$2.0 million is due to Supply as of the Petition Date.

<sup>7</sup> Shook is seeking authority to pay these claims in the ordinary course of business, for the reasons discussed below.

## **FACTS IN SUPPORT OF EMERGENCY FIRST DAY MOTIONS**

19. Contemporaneously with the filing of its Chapter 11 petition, Shook filed several emergency motions seeking entry of First Day Orders that it believes are necessary to enable it to operate in Chapter 11 with a minimum amount of disruption and loss of productivity and good will. Each of these motions is described below.

### **A. EMERGENCY MOTION FOR ORDER SETTING CRITICAL OPERATING MOTIONS FOR EXPEDITED HEARINGS**

20. The Debtor seeks an emergency hearing on the motions it has filed seeking authority to pay pre-petition wages and benefits to its employees; authorizing the payment of pre-petition trade claims; authorizing use of cash collateral and to obtain secured credit from SouthTrust Bank; authorizing the use of cash collateral and to obtain subordinated secured credit from Shook & Fletcher Supply Co.; authorizing maintenance of pre-petition bank accounts and cash management system; and authorizing the Debtor to limit service of pleadings to those counsel on a so-called "short list." The first five motions are true emergency matters whose determination is needed immediately after the Petition Date so as to avoid disruption in employee compensation and benefits, to permit prompt payment of obligations coming due in the ordinary course shortly after the Petition Date, and to obtain essential funding for operation of Shook's business and administration of this case. The motion limiting service will expedite notice and service to key parties, while trying to keep service and administrative costs under control.

21. The Debtor seeks a second hearing within the first week after the Petition Date on the administrative orders scheduling and noticing the joint hearing on approval of the Disclosure Statement and confirmation of the Plan and fixing objection deadlines; approving notice procedures for individual asbestos claimants; appointing a legal representative for the holders of

future asbestos claims; extending the time to file schedules and statements; and the interim appointment of bankruptcy counsel. These orders are essential to the smooth and efficient operation of this case, and the Debtor believes will help move this case forward promptly to confirmation.

22. The Debtor also seeks a third hearing within 20 days after the Petition Date on additional orders needed for the effective administration of the case, including final orders approving the use of cash collateral and DIP financing as well as orders extending the time for the Debtor to assume or reject leases, and extending the time within which the Debtor may file notices of removal of pending litigations.

**B. EMERGENCY FIRST DAY OPERATING MOTIONS**

**1. Motion for Authority to Pay Pre-Petition Wages and Benefits to Employees**

23. As of March 24, 2002, Shook employed 292 personnel, consisting of 28 salaried employees, principally management-level employees (the “Salaried Employees”), 20 employees paid on an hourly basis, principally persons employed in Shook’s warehouses (the “Hourly Employees”), and 244 union employees, principally employees who perform installation work pursuant to Shook’s installation contracts with its customers (the “Union Employees”). The total number of union employees Shook employs at any given time varies as the volume of its contract work varies. Shook has a loyal and stable workforce, and considers its labor relations, including relations with its workers’ unions, very good. As of the Petition Date, Shook had paid all wages and all benefits then due, except for (i) wages reflected in paychecks which had been issued but had not cleared Shook’s bank as of the Petition Date, and (ii) wages and benefits due for work performed prior to the Petition Date and for which the regular date of payment had not occurred as of the Petition Date.

(i) **Salaried Employee Pay and Benefits**

24. Shook's Salaried Employees are compensated twice a month – each salaried employee may receive an advance at the middle of each month (equal to approximately one-half of his or her monthly salary) and his or her monthly compensation (net of any mid-month advance) at the end of the month. All Salaried Employees utilize Shook's direct-deposit system; as a result, as far as Shook presently is aware, as of the Petition Date there were no checks outstanding for current compensation to Salaried Employees.

25. Because the Petition Date was on April 8, 2002, Salaried Employees worked from April 1, 2002 to the Petition Date, but have not yet been compensated for such pre-petition services.

26. Salaried Employees receive the following benefits (collectively, the "Non-Union Employee Benefits"):

- paid time off of from 5 to 20 days per year (depending upon seniority);
- participation in Shook's employee medical and dental insurance programs;
- participation in Shook's 401(k) employee plan;
- participation in Shook's Group Life Insurance and Long-Term Disability Insurance programs; and
- reimbursement of business expenses, including those incurred in connection with automobile usage, civic dues, and other reimbursable business expenses.

27. With respect to the employee medical and dental insurance programs, Shook pays the premiums associated with the employee's coverage. Those employees who elect family coverage pay additional premiums, by having fixed amounts withheld from each paycheck. With respect to Shook's 401(k) employee plan, employees who elect to participate have the

agreed amounts withheld from each paycheck. With respect to Group Life Insurance and Long-Term Disability Insurance, Shook provides such insurance coverages to its Salaried Employees at no cost to the employees; that is, Shook pays all costs associated with such programs.

**(ii) Hourly Employee Wages and Benefits**

28. Shook's Hourly Employees are paid each Wednesday, for services rendered during the week ending the previous Sunday. All Hourly Employees, other than Shook's Hourly Employees located at its Decatur, Alabama facility, utilize Shook's direct-deposit system; as a result, as far as Shook presently is aware, as of the Petition Date there were no checks outstanding for current wages for such Hourly Employees (other than those working at the Decatur facility).

29. Shook's Hourly Employees at its Decatur facility are paid by check drawn upon account number 70109869 at SouthTrust Bank (the "Decatur Account"). The Decatur Account is also used to pay Shook's Union Employees (as described below). As of the Petition Date, there were checks outstanding on the Decatur Account to Hourly Employees who had provided services to Shook pre-petition.

30. Because the Petition Date was on April 8, 2002, Hourly Employees worked from April 1, 2002 to the Petition Date, but have not yet been compensated for such pre-petition services.

31. Hourly Employees receive the same benefits on the same basis as Salaried Employees, except that Hourly Employees do not receive coverage under Shook's Long-Term Disability Plan.

**(iii) Union Employee Wages and Benefits**

32. Shook's Union Employees render services under Shook's contracts to install new

insulation or to remove existing insulation. As a result, the total number of Union Employees varies with Shook's contract requirements.

33. Shook currently is a party to certain union agreements<sup>8</sup> (collectively, the "Union Agreements"). Shook does not seek to modify or affect the Union Agreements; rather, Shook seeks authority to continue to pay amounts that are due to or on account of the work of its Union Employees for the period prior to the Petition Date and which, absent this Court's authority, could not be paid during the pendency of this Chapter 11 Case.

34. Shook's Union Employees are paid each Wednesday for work performed during the week ending the previous Friday. Union employees are paid by checks drawn on Shook's Decatur Account (described above). As of the Petition Date, it appears that certain checks previously issued by Shook had not yet cleared this Account. Thus, as of the Petition Date, there were checks outstanding to Union Employees who provided services to Shook pre-petition. Moreover, because the Petition Date was on April 8, 2002, Union Employees have worked from April 1, 2002 to the Petition Date, but have not yet been issued a paycheck for those pre-petition services.

35. In accordance with and as required by the Union Agreements, Shook makes contributions for health insurance, apprentice programs and welfare programs on behalf of its Union Employees (collectively, the "Union Employee Benefits," and collectively with the Non-Union Employee Benefits, the "Employee Benefits").

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<sup>8</sup> These agreements are:

- Collective Bargaining Agreement with Local 78, International Association of Heat and Frost Insulators & Asbestos Workers (the "Union"), as amended, dated September 24, 2001 (which expires September 26, 2004); and
- Project Agreement between the Debtor and Local 55 of the Union, effective August 1, 2000 (which expires July 31, 2002).

(iv) **Estimated Amounts of Pre-petition Wages and Benefits**

36. The Debtor estimates that, as of the Petition Date, gross wages due but unpaid (including wages for which checks had been issued but had not cleared) total approximately (collectively, "Pre-petition Wages"):

Salaried Employees: \$ 26,000;

Hourly Employees: \$ 10,000;

Union Employees: \$196,000.

The Debtor seeks authority to pay these amounts, to make all authorized deductions therefrom, and to pay to its employees the net amount of compensation due for the pre-petition period. In addition, the Debtor seeks authority to turn over all amounts withheld, whether as taxes, insurance premiums, 401(k) plan contributions or other authorized withholdings, including withholdings related to Union Employee Benefits, to the appropriate recipient in the ordinary course of business.

37. The Debtor withholds the amounts described as Employee Benefits as appropriate from employees' periodic paychecks, but in the ordinary course does not immediately turn over such deductions; rather, such deductions are remitted generally once a month. As of the Petition Date, the Debtor estimates that it has collected from employees but not yet turned over to the designated recipient, consistent with its ordinary business practices, approximately \$70,000. The Debtor seeks authority to pay over all such funds, including funds applicable to, or collected or earned during, the pre-petition period.

38. In addition to amounts withheld, as described above, the Debtor pays certain Employee Benefits from its own funds. For example, as is typical, the Debtor "pays" for paid time off, by permitting employees to accrue such leave to be used at later times. The Debtor also

pays to its applicable insurance carriers the premiums for medical and dental insurance coverage for its employees. By this Motion, the Debtor seeks authority to continue to honor (and permit employees to use) paid time off accrued pre-petition, and to continue to make payments for the Employee Benefits for which it pays, even if such benefits were earned during or are applicable to the pre-petition period.

39. Authority to pay pre-petition wages and benefits is essential to the Debtor's continued business operations and efforts to reorganize. As a service-oriented business, Shook depends upon the skill, expertise and commitment of its employees to continue in business; it cannot operate its business without the labor and skill of its employees. Loss of key employees, or indeed of any significant number of employees, would impose great burdens and risks upon the Debtor's business and its prospects.

40. If allowed to pay the pre-petition wages and benefits, the Debtor likely will be able to retain its employees and continue to operate its businesses, and thus continue with its efforts to reorganize. Without the authority to pay wages and benefits to its employees, many of whom depend upon regular receipt of their wages and benefits for their overall well-being, Shook faces the loss of employees and the resulting damage to its business. The loss of a material number of employees would leave the Debtor unable to continue operations of its business. The Debtor may be forced to liquidate, with an attending loss of jobs for the remaining employees and loss in value of the Debtor as a going concern. Accordingly, in the business judgment of the Debtor, payment of the Pre-petition Wages and Employee Benefits is necessary for the Debtor to continue its business operations and efforts to reorganize and therefore, is in the best interest of the Debtor, its estate, the employees, and creditors.



**2. Motion For Authority To Pay Pre-petition Trade Claims In The Ordinary Course Of Debtor's Business**

41. Shook believes that allowing for a smooth transition into and through Chapter 11 will preserve the principles upon which the Plan and the pre-petition Settlement Agreements are based. A fundamental aspect of the Debtor's efforts to minimize disruption during this case is its ability to maintain its relationships with the important parties that supply goods and provide services to the Debtor. Because these relationships are critical to the continued operation of the Debtor's business during and after the Chapter 11 case, the Debtor requests authority to pay in full all non-contingent, liquidated, undisputed unsecured pre-petition operational claims, including claims of trade suppliers and vendors (collectively, the "Trade Claims"), in the ordinary course of business.

42. In addition, the Debtor requests authority for the banks maintaining the Debtor's accounts to honor any checks, drafts or wire transfers dated prior to, on, or after the Petition Date upon presentation or receipt thereof in respect of the Trade Claims, and that such banks be authorized to rely upon the representation of the Debtor as to which of such checks, drafts or wire transfers are in payment of Trade Claims.

43. As of the Petition Date, the Debtor estimates that outstanding Trade Claims total in excess of \$500,000, including Trade Claims paid by checks which were issued prior to the Petition Date but which have not yet cleared through the Debtor's bank account. In the ordinary course of business, the Debtor purchases goods and services, and otherwise becomes obligated to pay, approximately 250 parties on an average monthly basis. These creditors include vendors, who provide insulation products and supplies, and service providers to the Debtor, including utilities. Such parties also include employees and employee-related expenses (payment of which

is requested to be authorized by separate motion) and taxing authorities to which the Debtor is obligated to pay over sales taxes collected on product sales.

44. Prior to the Petition Date, the Debtor advised many of its trade creditors of its anticipated Chapter 11 filing. While many continued to extend credit terms, a number indicated that they may re-evaluate their trade credit terms with the Debtor at any time. Moreover, one vendor eliminated the Debtor's trade credit entirely, immediately made a reclamation demand, and insisted upon cash in advance for future product deliveries. While I believe such actions were needless overreactions, Shook has no assurance that other vendors will not take similar actions.

45. Shook is at an important juncture in this process, as it seeks to move through Chapter 11 quickly, with its business intact and with minimal impact upon its creditors and its ongoing operations. It is critical for the Debtor to be able to do so and that it be authorized to pay pre-petition Trade Claims. Unless the Debtor is authorized to pay the Trade Claims in the manner requested in the Motion, its creditors may well reconsider the favorable trade terms generally available to the Debtor and critical to the Debtor's smooth operations. Such a result should be avoided, because the Debtor needs continued and uninterrupted service from these creditors to continue to efficiently operate its business.

46. Shook typically makes payments to Trade Creditors every five days, to comply with credit terms and to take advantage, as appropriate, of discounts available for early payment. Shook made such payments on April 5, 2002, in the ordinary course of its business; checks issued that day remain outstanding. The next regularly scheduled payment date is April 10, 2002, when the Debtor, in the ordinary course of its business, would pay approximately \$250,000 of Trade Claims. It is crucial that the Debtor make this payment in the ordinary course

of business, to preserve customer terms and discounts and to minimize the impact of its Chapter 11 case upon its trade creditors. Accordingly, the Debtor seeks the relief requested in this Motion on an expedited basis.

47. Expedited relief is warranted because delays with respect to payment of such Trade Claims may disrupt the operations of the Debtor. Any disruption could lead to situations where the Debtor is unable to provide customers with products required by job specifications. Such situations could result in the loss of sales and customers.

48. The Debtor's Plan provides for the payment in full of Trade Claims. Since the Plan has been accepted overwhelmingly by all classes of impaired creditors, it serves no useful purpose to make trade creditors wait for payment until the Effective Date when the Debtor has the financial resources and the business justification for making payments on Trade Claims as and when due.

49. The Plan does not impair the Trade Claims; rather, the Debtor proposes to pay the Trade Claims in cash in full in the ordinary course of business. The relief requested in the Motion is merely an extension of the treatment provided in the Plan, which has been overwhelmingly accepted by all impaired classes. Payment of such claims in the ordinary course of the Debtor's business merely accelerates the distribution that the holders thereof would receive in any event upon effectiveness of the Plan. Therefore, granting the Motion would have no substantial effect on the relative distribution of the estate assets or on any other creditor or party-in-interest.

50. Payment of Trade Claims would not create an imbalance in its cash flow. This case was not filed to create "breathing room" by deferring such payments; rather, the proposed debtor-in-possession financing from SouthTrust and Supply, together with the cash generated in

the ordinary course of the Debtor's business, will provide more than sufficient liquidity for payment of the Trade Claims in the ordinary course of business.

**3. Motions for Authority to Use Cash Collateral and to Obtain Secured Credit**

**(i) SouthTrust**

51. Shook maintains a working capital line of credit facility with SouthTrust in the aggregate amount of \$3 million (the "SouthTrust Financing"). Shook's obligations to SouthTrust are secured by a lien upon, among other assets, Shook's contract rights (including accounts receivable), inventory, goods, equipment and parts, and the proceeds thereof.<sup>9</sup>

52. As of the Petition Date, approximately \$2.6 million was outstanding under the SouthTrust Financing. Advances under the facility accrue interest at 25 basis points below SouthTrust's base rate. Shook may draw advances up to 75% of eligible receivables (generally those outstanding 90 days or less) and 50% of the cost of inventory, up to the \$3 million aggregate limit. This line of credit facility is payable in full on April 1, 2003.

53. True and correct copies of the Revolving Note and the Loan and Security Agreement in favor of SouthTrust, and the amendments thereto, are attached to the Motion for Authority to Use Cash Collateral and to Obtain Secured Credit from SouthTrust Bank (the "SouthTrust Motion") as Exhibit A.

**(ii) AmSouth**

54. In July 1998, AmSouth made a mortgage loan in the aggregate amount of \$1,050,000, secured by a first priority mortgage upon Shook's headquarters building at 4625 Valleydale Road in Birmingham. Approximately \$900,000 remains outstanding under that loan.

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<sup>9</sup> As additional security, Wayne W. Killion, Sr. also has provided SouthTrust with a \$1 million limited guaranty.

Shook is current in its payments to AmSouth as of the Petition Date. I believe that the value of the Valleydale Road property exceeds the amount due to AmSouth.

(iii) **Supply**

55. Early on, Shook realized that the costs of this process would likely accumulate to levels greater than its ability to pay solely from the proceeds of ongoing operations and the existing SouthTrust Financing. Given Shook's situation, it was not realistic to obtain financing from any commercial source upon any reasonable terms. As a result, Shook turned to its affiliate Supply for secured financing.

56. Supply is a Delaware corporation with its principal place of business in Birmingham, and is in the business of supplying equipment and tools to customers engaged in the mining business. The common stock of Supply was owned by Shook until August 1999, when it was distributed to Shook's shareholders. Since that time, Supply has been owned by the same shareholders who own the Debtor – Wayne W. Killion, Sr. and myself.

57. Supply agreed to make available to Shook on a secured basis up to \$2 million of working capital, in addition to (and subordinate to) that provided by SouthTrust. In April 2002, before the Petition Date, in light of the costs incurred to that time and anticipated future costs, Supply agreed to increase the amount available under this line of credit to \$3 million (the "Supply Financing").

58. Shook's obligations to Supply are secured by a blanket lien upon all of Shook's assets and all proceeds, subordinate only to the liens and security interests in favor of SouthTrust and AmSouth as to their respective collateral.

59. As of the Petition Date, approximately \$2.0 million was outstanding under the Supply Financing. Advances under the facility accrue interest at the Compass Bank prime rate per annum. This line of credit presently expires in December 2002.

60. True and correct copies of the Loan and Security Agreement in favor of Supply, and the amendments thereto, are attached to the Motion for Authority to Use Cash Collateral and to Obtain Subordinated Secured Credit from Shook & Fletcher Supply (the "Supply Motion") as Exhibit A.

**(iv) The Proposed DIP Financing**

61. Unless the Debtor can continue to obtain advances under the SouthTrust Financing and the Supply Financing, or obtain replacement financing, the Debtor will not have available sufficient working capital with which to operate its business and fund this Chapter 11 case.

62. At Shook's request, both SouthTrust and Supply have agreed to permit Shook to use cash collateral – principally collections of accounts receivable – and have further agreed to provide post-petition financing, by continuing in place on a post-petition basis the same financing agreements as existed pre-petition (collectively, the "DIP Financing").

63. The terms of the DIP Financing from SouthTrust are embodied in the Agreement Regarding Use of Cash Collateral and DIP Financing, a true and correct copy of which is attached to the SouthTrust Motion as Exhibit B. The terms of the DIP Financing from Supply are embodied in the Agreement Regarding Use of Cash Collateral and Subordinated DIP Financing, a true and correct copy of which is attached to the Supply Motion as Exhibit B.

64. The terms of the DIP financing are essentially the same as SouthTrust's and Supply's respective pre-petition facilities as to interest rate, conditions for advances, collateral,

and liens and security interests. Both SouthTrust and Supply have agreed to waive any defaults under their respective loan documents caused solely by Shook filing its Chapter 11 case. Each facility retains its respective maturity date.

65. In my view, Shook would not be able to obtain the additional working capital it requires during this case on an unsecured basis as an administrative claim. Because SouthTrust and Supply are willing to continue to provide financing with a minimum of cost and expense, and with no disruption to Shook's existing financing agreements, I believe that the DIP Financing is more advantageous to Shook than any replacement financing would be.

66. Shook requires the use of cash collateral to pay its operating expenses and other costs in this case and to preserve the value of its assets. Without the ability to use the cash it collects from its customers, Shook will not be able to continue to function as a going concern or to reorganize. Shook requires the use of its cash collections and additional financing not only on a final basis during this case, but also on an immediate basis. Shook needs to pay (and is requesting authority to pay) its pre-petition payroll and pre-petition trade claims in the ordinary course of business, as described below.

67. Shook believes that, with anticipated cash receipts during the interim period, and borrowings of up to \$600,000 in the aggregate, it will be able to pay all such expenses. Accordingly, pending a final hearing upon its DIP financing motions, Shook seeks authority to borrow up to a total of \$600,000 – up to \$200,000 from SouthTrust and up to \$400,000 from Supply. As a result, pending a final hearing, the maximum amount available from SouthTrust and Supply would be \$2.8 million and \$2.4 million respectively.

68. The volume of Shook's contracts for installation services has increased substantially in the past few months. As a result, both its operational expenses (principally labor

and materials costs) and its current accounts receivable are at high levels, but payments from its customers are not yet due. Shook believes that the substantial payments expected from the customers within the next few months will permit it to reduce its borrowings after the interim period. Shook believes that the interim DIP Financing requested is critical to avoid immediate and irreparable harm to the Debtor's estate, and is necessary to preserve and maximize Shook's assets.

4. **Motion for Authority to Maintain Pre-Petition Bank Accounts and Cash Management System**

69. By this Motion, Debtor seeks to continue its existing bank accounts in place. The Debtor presently maintains nine bank accounts, including its general account, an account utilized in connection with Shook's Decatur, Alabama facility (the "Decatur Account"), and seven petty cash accounts (collectively, the "Existing Accounts"), which are listed in Exhibit A attached to the Motion. The general account includes all cash receipts and disbursements. Disbursements are charged against the general account and funds needed, or excess funds, are balanced against the Debtor's line of credit. The balance in the general account is reconciled to the Debtor's cash position statement daily, and any balance remaining at the end of each day is swept automatically to pay down the Debtor's line of credit with SouthTrust.

70. The Decatur Account is used for payroll checks issued to the Debtor's Union Employees and to those of its Hourly Employees employed at its Decatur facility. The other seven accounts are petty cash accounts, used solely for small disbursements. The Debtor would face significant expense and disruption if required to immediately and abruptly set up a new system of accounts, particularly the Decatur Account used for its hourly payroll disbursements. In order to avoid this burden and expense, the Debtor requests authority to continue the Existing Accounts to the extent described below.



71. The Debtor proposes to keep in place all Existing Accounts, which would remain open but would be designated as “Debtor-in-Possession” accounts. The Debtor separately seeks authority to pay pre-petition payroll and honor outstanding pre-petition payroll obligations; if such authority is granted, payment of such funds through the Decatur Account will be the most efficient way to implement the payment of these necessary obligations relating to employees, without disruption to Shook or its employees.

72. The Debtor also requests authority to maintain its pre-petition cash management system and the automatic sweep of funds to pay down its line of credit with SouthTrust. This system is important to SouthTrust, which has agreed to permit use of its cash collateral and to provide post-petition financing to the Debtor, and expects to continue to sweep the Debtor’s accounts to repay any outstanding borrowings on a daily basis. Daily payments will serve to minimize the interest obligations to SouthTrust for which Shook would be liable.

73. If forced to modify its Existing Accounts and cash management system, payment of the Debtor’s post-petition obligations would be delayed and the business disrupted. Any delay in payments to employees or suppliers would impair the reorganization effort, because the continued support of employees and suppliers is vital to the Debtor’s success in this Chapter 11 case. Attempting to replace the existing system with new post-petition accounts, in addition to being inefficient and time consuming, could jeopardize a smooth transition to operating in Chapter 11 as a debtor-in-possession.

5. **Motion for Order Limiting Notice and Service of Pleadings to Designated Parties and Representatives**

74. Shook seeks to limit service to those parties-in-interest on a “short list” for all notices to be sent or pleadings filed in this case, except for the notice(s) of (i) the commencement of this case, (ii) the section 341 meeting of creditors, (iii) any claims bar date which may be set

in this case, and (iv) the deadlines for filing objections and the hearing to consider approval of the Disclosure Statement and confirmation of the Plan.

75. The proposed short list includes: (i) counsel for Shook; (ii) the Legal Representative and his counsel; (iii) the members of the pre-petition Unofficial Committee of Asbestos Claimants; (iv) counsel for Shook's secured lenders (SouthTrust, AmSouth, and Supply); (v) counsel for certain other parties-in-interest who participated in the pre-petition settlement agreements (Hartford Insurance Company, the Center for Claims Resolution, and Shook's shareholders); and (vi) the Bankruptcy Administrator for the District. In addition, any party filing a pleading seeking relief directly against any other person or entity not on the Service List would also be required to serve such pleading upon such person or entity against whom or which such relief is sought.

76. The potential costs associated with copying and mailing or otherwise serving all notices and motions to the entire creditor group, including the more than 80,000 asbestos-related claimants, would impose a significant burden and expense upon the Debtor's estate. Given the representatives of the various creditor groups on the Service List, it appears to me that any potential benefit from service upon all creditors (rather than just service on representative counsel) is outweighed by the concomitant cost which Shook would have to bear.

\* \* \*

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
WAYNE W. KILLION, JR.

Dated: April 8, 2002

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
Southern Division**

**In re:**

**SHOOK & FLETCHER INSULATION CO.**

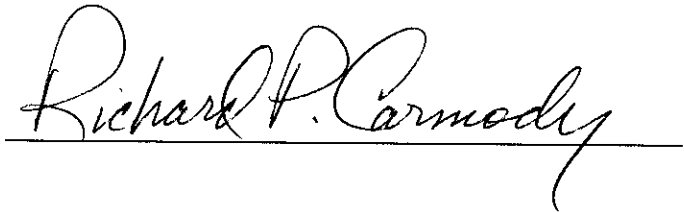
**Debtor-in-Possession.**

**Case No.** \_\_\_\_\_

**Chapter 11**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 8<sup>th</sup> day of April, 2002, I caused a copy of the foregoing Declaration of Wayne W. Killion, Jr. in Support of Voluntary Petition and First Day Motions to be served upon the persons on the attached Service List in the manner indicated.

  
\_\_\_\_\_

Shook & Fletcher Insulation Co.  
Attachment to Certificate of Service

**Bankruptcy Administrator**

J. Thomas Corbett, Esq.\*  
Office of the Bankruptcy Administrator  
United States Bankruptcy Court  
Robert South Vance Federal Building  
1800 5<sup>th</sup> Avenue North  
Birmingham, AL 35203

**Futures Representative**

R. Scott Williams, Esq.\*  
Haskell Slaughter Young & Rediker, L.L.C.  
1200 AmSouth/Harbert Plaza  
1901 Sixth Avenue North  
Birmingham, AL 35203

**Futures Representative's Counsel**

Robert M. Fishman, Esq.  
Shaw Gussis Fishman Glantz & Wolfson, LLC  
1144 West Fulton Street, Suite 200  
Chicago, IL 60607

**Unofficial Committee of Asbestos Claimants**

Bryan Blevins, Esq.  
Provost & Umphrey Law Firm L.L.P.  
490 Park Street  
P.O. Box 4905  
Beaumont, TX 77704

James L. Ferraro, Esq.  
Kelly & Ferraro, LLP  
1300 East Ninth Street, Suite 1901  
Cleveland, OH 44114

David O. McCormick, Esq.  
Cumbest, Cumbest, Hunter & McCormick, P.A.  
P.O. Drawer 1287  
708 Watts Avenue  
Pascagoula, MS 39568-1287

Joseph F. Rice, Esq.  
Ness Motley Loadholt Richardson & Poole, PC  
28 Bridgeside Boulevard  
Mount Pleasant, SC 29464

Jeffrey Varas, Esq.  
Varas & Moran  
119 Caldwell Drive  
Hazlehurst, MS 39083

**Counsel for SouthTrust Bank**

David S. Maxey, Esq.\*  
Spain & Gillon LLC  
The Zinszer Building  
2117 2nd Avenue North  
Birmingham, AL 35203

**AmSouth Bank**

John Ketting, Loan Officer\*  
AmSouth Bank of Alabama  
Main Office Birmingham  
1900 – 5<sup>th</sup> Avenue North  
Birmingham, AL 35203

**Counsel for Shook & Fletcher Supply Co.**

Donald M. Wright\*  
Sirote & Permutt, P.C.  
2311 Highland Avenue South  
Birmingham, AL 35205

**Counsel for Additional Parties-in-Interest**

John P. Whittington, Esq.\*  
Lloyd C. Peebles, III, Esq.  
Bradley Arant Rose & White LLP  
2001 Park Place, Suite 1400  
Birmingham, AL 35203-2736  
*Counsel for the Shareholders*

William J. Bowman, Esq.  
Hogan & Hartson  
555 13<sup>th</sup> Street, N.W.  
Washington, DC 20004-1109  
*Counsel for Hartford Insurance Co.*

William R. Hanlon, Esq.  
Franklin D. Kramer, Esq.  
Shea & Gardner  
1800 Massachusetts Avenue, NW  
Washington, DC 20036  
*Counsel for CCR*

Michael P. Richman, Esq.  
Mayer, Brown, Rowe & Maw  
1675 Broadway  
New York, NY 10019-5820  
*Counsel for CCR*

W. Clark Watson, Esq.\*  
Eric T. Ray, Esq.  
Balch & Bingham LLP  
1710 Sixth Avenue North  
Birmingham, AL 35201-0306  
*Counsel for Travelers Casualty and Surety Company*

\* Parties designated with an asterisk were served by hand-delivery. All other parties were served by overnight mail.